BAIL SLIP

The Appellant herein (viz.) Ayyanar @ Chinnavan-Accused No.1 in S.C.No.5/2004 on the file of District and Sessions Judge, Uthagamandalam, Nilgiris District was directed to be released on bail as per order of this Court dated 29.12.2004 and passed in Crl.M.P.No.12117/2004 in Crl.A.No.1315/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 02.11.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE S. TAMILVANAN

CRIMINAL APPEAL No.1315 OF 2004

Ayyanar @ Chinnavan ... Appellant/Accused

-Vs.-

State rep.by
The Inspector of Police
Devala Police Station.
Nilgiris District ...Respondent/Complainant

Appeal under Section 374 of Cr.P.C. against the judgment dated 07.10.2004 made in S.C.No.5 of 2004 on the file of learned Nilgiris District Sessions Judge, Udagamandalam.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr. C.T.Selvam
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Tamilvanan, J)

This appeal is directed against the conviction and sentence imposed on the appellant/A1, in S.C.No.5 of 2004, on the file of learned Sessions Judge, Nilgiris at Udagamandalam. Appellant/A1 was

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

convicted for the offences punishable under Section 302 IPC and sentence to undergo life imprisonment and also to pay a fine of Rs.1,000/- and in default to undergo a further period of one year simple imprisonment and convicted under section 302 r/w 201 (2 counts) IPC, imposed a sentence of three years RI with a fine of Rs.1,000/- and in default to undergo 1 year simple imprisonment for each count and the sentences were to run concurrently.

2. Heard Mr.K.V.Sridharan, learned Counsel appearing for the appellant and Mr.C.T.Selvam, learned Additional Public Prosecutor for the State.

3. The brief facts of the prosecution case are as follows:- According to the prosecution, the father of the Appellant/A1 is A2 and the brothers-in-law of the appellant are A3 and A4. Accused A1 to A3 were residing at Athimanagar and A4 was residing at Ponnrunadukani. P.W.3 is the mother of the deceased Sainaba. P.W.2 is the son of Sainaba. The deceased Sainaba was a tenant residing in the house of P.W.4 along with her son P.W.2. P.W.5, one Ravi and Appellant/A1, were working under Asokan a contractor. The appellant/A1, used to visit the house of Sainaba during night hours. Hence, P.W.4 owner of the house warned Appellant/A1 not to come to the house, since the deceased Sainaba was residing lonely in her residential building. One day when the appellant/A1 visited the house of Sainaba, P.W.5 asked Sainaba about his visit, who in turn stated that she was going to marry A1. In 1998, September, one day morning, Sainaba had sent her son P.W.2 to his first husband's house saying that she was going to Kerala for doing some job and as such P.W.2 was living with her first husband. It is the further case of the prosecution that at the instigation of A2, the appellant/A1 had proposed to marry another girl, and in order to avoid hindrance from Sainaba, the appellant/A1 murdered her and concealed her dead body, with the help of A3 and A4. The Sessions Court, by giving benefit of doubt, acquitted A2 to A4, but convicted the appellant/A1 for the alleged offence.

4. P.W.1, is an employee in a Bari Agro Company, Valparai. On 01.12.1998 at about 08.00 a.m. when it was brought to the notice by an employee of the Estate, one Angamuthu, that there was a dead body found in the Tea Field Boundary, immediately on getting a complaint (Ex.P.1) from the said employee, he forwarded the same to the Devala Police Station. A copy of the F.I.R. was marked as Ex.P.15, through the Investigating Officer, P.W.11. Based on the complaint, the Inspector of Police inspected the scene of occurrence at about 09.30 a.m., on 01.12.1998 and prepared Ex.P2, observation mahazar in the presence of the witnesses P.W.1 and said Angamuthu and also prepared a rough sketch showing the scene of occurrence, which was marked as Ex.P.16. He conducted the inquest on the decomposed body of the deceased in the presence of Panchayatdars and witnesses. The

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

inquest report prepared by Inspector Sukumaran was marked as Ex.P.17. The requisition given by the Investigating Officer for post mortem, was marked as Ex.P8. The dead body was found in a decomposed state, hence the skull was removed from the skeleton and sent along with photo of a woman relating to a case in Crime No.190 of 1998 wherein, a case was registered as woman missing, for superimposition of the skull . A Copy of the FIR registered under the aforesaid case was marked as Ex.P.18.

5. P.W.3, mother of the deceased Sainaba has deposed that she had given a complaint on 19.12.1998 before the police that her daughter was missing. The complaint was marked as Ex.P.4 through the witness. A copy of the photo given by the said witness before the police was marked as Ex.P.3 and the same was sent for super imposition.

6. P.W.4 is the owner of the house, where Sainaba was the tenant, but She turned hostile. She has deposed that she knew the deceased Sainaba and that she was the tenant in her residence. She further deposed that number of persons used to come and visit her house during night hours and that the first accused was one among them. Since the deceased was staying as a lonely woman, P.W.4 asked A1, not to visit the residential premises again. According to her, she did not know anything about her intention of marrying the appellant. At that stage she was treated hostile.

7. As per the evidence of P.W.5, Sainaba was a co-employee of P.W.5. Both were working under a Contractor by name Asokan, where one Ravi and Chinnavan (A1) were working as maisons. According to her, Sainaba told that she was going to marry A1 and that they were closely moving with each other and that one Rani also knew about this. She advised Sainaba not to marry A1, since he was younger to her. She knew that A1 used to visit the house of Sainaba and that Radha P.W.4, also asked A1 not to visit the house of Sainaba and advised him, even if he was going to marry her, he could move with her only after such marriage and asked him to avoid visiting her house at present. Since Sainaba was residing as a lonely woman, P.W.4 advised A1 in such a manner, thinking that people might speak differently, if he frequently visits her house. According to her one day, both the appellant/A1 and Sainaba had come to her house and informed that they were going to marry and she saw Sainaba dressed with proper saree and said that she was going to Cuddalore for getting married. According to her after having kept her bag at the house of P.W.4, she came to her house on the day. Afterwards she came to know about the death of Sainaba.

8. P.W.11, Inspector of Police attached to Devala Police Station who filed the charge sheet has deposed that his predecessor, inspector Sukumaran, registered the case in Cr.No.186 of 1998 under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Section 174 Cr.P.C. on receipt of the intimation about the death of Sainaba. A copy of the F.I.R. prepared by the previous Inspector was marked as Ex.P.15 through him. On 01.12.1998 at about 09.30 a.m. the said Inspector visited the scene of crime and prepared Observation Mahazaar (Ex.P.2) and prepared a rough sketch showing the scene of occurrence, which was marked as Ex.P.16. He conducted the inquest on the decomposed body of the deceased. The inquest report prepared by the previous Inspector Sukumaran was marked as Ex.P.17. The requisition given by him for post mortem was marked as Ex.P8. Then, the skull was removed from the skeleton and sent along with the photo of a woman relating to a case in Crime No.190 of 1998 wherein a case was registered as woman missing for superimposition of the skull . A Copy of the FIR registered relating to the aforesaid case was marked as Ex.P.18.

9. After P.W.11 assumed charge, he took over the investigation of the case, registered in Crime No.186 of 1998, under Section 174 Cr.P.C, on 21.11.2000 at about 08.00 a.m. the investigating officer P.W.11 proceeded to Devala Bazaar and found the appellant/A1. While he was enquired, he gave a confession statement which was recorded by P.W.11, in the presence of the witnesses. According to him, pursuant to the above alleged confession statement, the appellant was taken to the place referred by him, which was the same place, where the decomposed dead body was found on 01.12.1998 by the previous Inspector. Observation Mahazar Ex.P.6 and rough sketch Ex.P.20 were prepared at the scene of occurrence. According to P.W.6, witness to the alleged confession statement, nothing was recovered from the Appellant/A1 by P.W.11. Even according to P.W.8 and P.W.11, no material object was recovered from this Appellant/A1. On 21.11.2000 at about 09.30 a.m. P.W.11 again visited the scene of occurrence where the decomposed dead body had been found and then arrested A2 at his residence in Athima Nagar at about 11.30 a.m. On the same day, he arrested A3 at Athikunna Estate side. The fourth accused was arrested at about 03.00 p.m. in a place called Nadukan. Then, they were sent to judicial custody.

10. P.W.11 Inspector of Police, had altered the case on 21.11.2000 from Section 174 Cr.P.C. into Section 302 IPC and sent express report Ex.P.21, to the Court. He also examined P.W.8 on 22.11.2000, who informed that A1 had concealed his shirt in Athikunna Pal Tree and handed over the same at 13.30 hours, which was recovered by P.W.11 Inspector of Police as M.O.1. Three plastic carry bags M.O.3 and a gunny rope M.O.4, have also been recovered under Ex.P.7 in the presence of witnesses. After completing the investigation, he laid the charge sheet against the accused under Section 302 read with 201 IPC.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. P.W.6 is a witness to the admissible portion of the confession Statement Ex.P.5 given by A1. P.W.7 would depose that he was a road worker in Athikunna Estate and that about 6 years prior to his deposing evidence, he was taken to a place at Athimarapallam, where at about 1 1/2 feet beneath in the earth, one yellow colour saree was found, with a petticoat and a handkerchief. On the next day, when he went there, the same were not found. There is no cogency in the evidence of the aforesaid prosecution witnesses with reference to the alleged offence.

12. P.W.8 has deposed that he was working in a factory at Athikunna and that he knew the accused. According to him, one day when he went for taking bath, he found certain clothes which were concealed underneath of a stone. On verification, he found a blood stained shirt, which was M.O.1. Then he informed the same to the police. On the intimation given by one Periyasamy, head of the Village, the police came and recovered M.O.1. At that stage he was treated hostile. As per Ex.P.21, altered Express Report, knife had been used for stabbing the deceased Sainaba, but the knife was not recovered by the prosecution and no reason has been assigned for the non-recovery of the alleged knife.

13. The Doctor, who conducted autopsy on the decomposed body found at the scene of occurrence was examined as P.W.9. The Doctor on the written request Ex.P.8 given by the Inspector Sukumaran visited Athikunna Estate on 01.12.1998, where he found a decomposed female body. According to him the face of the dead body could not be identified, hair was found about 5 cm, black in colour and has given the other details in his Post Mortem certificate Ex.P.9. But, P.W.9 has not stated that the deceased could have been done to death by stab injuries. He removed the skull M.O.2, from the dead body and preserved for further investigation.

14. P.W.10 Scientific Assistant Grade I, scientifically analysed the skull, which was removed from the decomposed body found at the scene of crime along with the photographs of Sainaba, which was marked as Items 2 and 3. P.W.10 has opined that skull No.1 could very well belong to a female individual, to the items 2 and 3.

15. The Trial Court has given its finding on the basis of the inadmissible portion of the confession statement given by the appellant/A1. It is seen that the Trial Court has relied on the alleged confession given by A1, before the police officer, against Section 25 of the Indian Evidence Act.

16. The learned counsel for the appellant would contend that the Trial Court has convicted Appellant/A1 under Section 302 read with 201 IPC without proper evidence. As there is no direct

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

evidence to prove the guilt attributed against the appellant, the prosecution could have established the same by circumstantial evidence, as per the procedure known to law. But in this case, there is no substantial evidence available to prove the guilt against the accused. The child witness P.W.2 could identify the appellant/A1 and depose that the appellant/A1, used to visit their house and stay during night while his mother Sainaba was alive. There is no other evidence available to connect the appellant/A1 with alleged offence. Even P.W.9, the Doctor who conducted autopsy, could not say whether the person of the decomposed body was done to death by homicidal violence or otherwise. He has stated that the dead body was found in a decomposed condition and he has given the details about the decomposed body and nothing more, on the cause of death. As contended by the learned counsel for the appellant the alleged confession statement given before the police officer is inadmissible in evidence as per Sec.25 of the Indian Evidence Act. Ex.P.5 is stated as the admissible portion of the confession statement leading to recovery of material objects. But pursuant to the confession statement, no material object was recovered from the appellant/A1. They were recovered only through P.W.8. It is seen that the Court below has gone into the inadmissible portion of the alleged confession given before the police officer and has held that the guilt against the appellant/A1, was proved beyond reasonable doubt. In this case, there is no direct evidence against the accused. Therefore, the Court has to consider whether the circumstantial evidence, both oral and documentary adduced by the prosecution is sufficient to prove the guilt against the appellant. P.W.1 is only a person who forwarded the intimation about the decomposed dead body found at Athikunna Estate. P.W.2 a child witness who had spoken to, only about the intimacy of his mother, Sainaba with the Appellant/A1 prior to the occurrence. P.W.3 mother of the deceased would state that the deceased was not living with her and that she was living in some other place and that she gave the complaint Ex.P.4, stating that her daughter had been missing. She gave the complaint with the photo of her daughter Sainaba, which was marked as Ex.P.3. P.W.4 turned hostile. P.W.5 is a co-employee who has stated that prior to the occurrence the appellant/A1 used to visit the house of deceased and since she was residing lonely in a portion of the house, P.W.5 asked appellant/A1 not to visit the house. P.W.6 is the only a witness to the admissible portion of the confession statement, not leading to recovery of any material objects. P.W.7, the road worker has only stated that about six years prior to his deposing evidence he saw a saree, petticoat and a handkerchief at about 1 1/2 feet beneath the earth at a place Athimarapallam and on the very next day, he could not see the said items there. He has not spoken to any other evidence for connecting accused with the alleged offence. According to P.W.8, he had seen only a blood strained shirt M.O.1, which had been concealed underneath a stone and the same was recovered by police through one

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Periyasamy, village head, then the witness turned hostile. P.W.9 is only a Doctor, who conducted post mortem on the decomposed dead body found at the scene of occurrence on 01.12.1998 and the case was altered into Section 302 IPC, only on 21.11.2000 under Ex.P.21. P.W.10 Scientific Assistant of forensic department has given her scientific opinion that the skull M.O. 2 relates to a person seen in the Photographs sent along with the skull, and she has also given her evidence scientifically so as to establish her said opinion. The skull MO2, which was removed from the decomposed body found at the scene of occurrence has been proved by way of super imposition and thereby the prosecution has established that the dead body found at the scene of occurrence was that of Sainaba, daughter of P.W.3.

17. As per the Post Mortem certificate Ex.P.9, the cause of death could not be decided by the Doctor P.W.9 and the prosecution has not even established that Sainaba was done to death by homicidal violence. As per the prosecution case, altered into Section 302 IPC on 21.11.2000, the deceased Sainaba was done to death by inflicting stab injuries with knife. But the alleged knife was not recovered and marked as material object. There is no evidence available in this case to establish the complicity of the appellant/A1 with the alleged crime. Therefore, we are of the considered view that the alleged guilt against the appellant has not been proved beyond reasonable doubt.

18. For the reasons stated above, we are of the view that the prosecution case suffers from so many infirmities which were not taken note of by the learned Sessions Judge, while convicting the Appellant/A1. Under these circumstances, we are inclined to set aside the judgment under challenge and accordingly it is set aside and the appeal is allowed. The accused is acquitted of the offences for which he was charged, tried and convicted.

rg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The District Sessions Judge, Udagamandalam, Nilgiris District. (Copy communicated to the Accused)

2. The Judicial Magistrate, Gudalur, Nilgiris District.

3. The Judicial Magistrate thro' the Chief Judicial Magistrate, Gudalur, Nilgiris District.

4. The District Collector, Nilgiris District.

5. The Director General of Police, Chennai.

6. The Public Prosecutor, High Court, Madras.

7. The Superintendent, Central Prison,Cuddalore

8. The Inspector of Police, Devala Police Station, Nilgiris District .

1 cc to Mr.K.V.Sridharan, Advocate, SR.51799

gm (co)

dv/29.11.06

Crl.A.No.1315/2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/